

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DAVID S. STEWART, # 173012,

Petitioner,

v.

Case Number: 11-cv-10410
Honorable Denise Page Hood

SHIRLEE HARRY,

Respondent.

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ORDER DENYING MOTION TO COMPEL

This is a petition for writ of habeas corpus brought by a state prisoner pursuant to 28 U.S.C. § 2254. Pending before the Court is Petitioner David S. Stewart's "Motion to Compel Respondent to Include Documents Under Rule 5," filed May 6, 2011. (Dkt. # 9.) In this pleading, Petitioner is seeking the following documents: (1) Burton City Police Department Complaint; (2) Preliminary Examination Transcripts (attached as Document # 8-2); (3) Defendant's Motion to Withdraw Plea (attached as Document # 8-10); (4) Defendant's Supplemental Motion to Withdraw Plea; (5) Opinion and Order Rejecting Successive Motion to Withdraw Plea (attached as Document # 8-9); and (6) Supplemental Brief in Support of Application for Leave to Appeal in the Michigan Court of Appeals (attached as Document # 8-10). For the reasons stated, the Court will deny the motion.

As a general rule, "[a] habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course." *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). This Court ordered Respondent to submit a response to Petitioner's petition and all the relevant state court materials, pursuant to Rule 5 of the Rules Governing Section 2254 Cases, which were submitted on April 11, 2011. The documents requested either have been filed with the Court, as stated above, or are not necessary, at this time, for the resolution of Petitioner's claims.

Accordingly, the Court **DENIES WITHOUT PREJUDICE** Petitioner's motion to compel. (Dkt. # 9.) Should the Court determine, after reviewing Respondent's response and the Rule 5 materials submitted, that such materials are necessary for the resolution of Petitioner's case, it will reconsider Petitioner's request and issue an appropriate order. Petitioner need not file an additional motion regarding this issue.

IT IS SO ORDERED.

Dated: June 10, 2011

S/Denise Page Hood
DENISE PAGE HOOD
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to David Stewart, 173012, Pugsley Correctional Facility, 7401 East Walton Road, Kingsley, MI 49649 and the attorneys of record on this date, June 10, 2011, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160